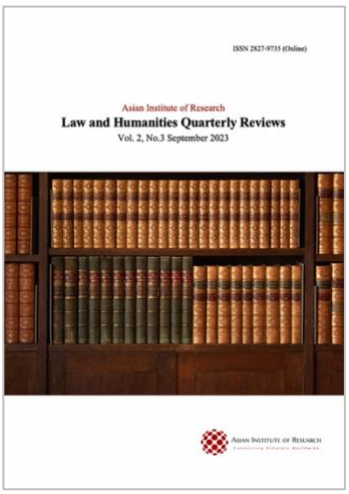


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Oil and Gas Extraction in Nigeria and its Impacts on Environment: Radical Measures to Deep-Seated Challenges of Environmental Sustainability

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Abstract
Environmental Law is a contemporary issue and this invasive subject houses number of other disciplines like economics, sociology, social sciences, oil and gas law, law of the sea, international law and many others. These disciplines have made some efforts to understand the best way to approach the environment with divergent views through interdisciplinary approach in assessing their choice of policy and ideas. As a result, this work will delve into a qualitative approach in exploring the perspectives that influence ways of thinking and making policies that are reflected in Nigerian environmental laws and policies and judicial processes in maintaining a sustaining environmental development and conserving its bio-diversity.

Keywords: Oil and Gas, Extraction, Environment, Impacts

1. Introduction

Globally, there is a growing concern on issues of land and environmental challenges such as global warming, ozone layer depletion, oil and other industrial pollutions, gas flaring, volcanic eruption, acid rain and others. Nigeria is not foreclosed from these challenges especially with her policy and level of land compulsory acquisition and industrialization. Therefore, there is the need to examine the approach or efforts of the national laws, government and other stakeholders of Nigeria towards addressing these protruding issues of land and environment alongside the global best practice or perception. The character, capacity, pedigree and development of Nigerian land and environmental Laws in securing and sustaining the future of Nigeria is the cardinal aim of this work. It will also focus generally on the administration and management of Nigerian land and environment with reference to global best practices in solving the maladies in land administration and environmental

management in the country. It will also examine the land and environmental problems in Nigeria alongside her various domestic and transnational laws in concluding this work.

2. Implications on Oil and Gas Production and Critical Pursuits of Environmental Sustainability: A Check on Canadian and Nigerian Experiences

The effects of production of oil and gas in Nigeria have at recent time triggered off serious questions on the soundness of her environmental law and effective adjudication of judicial processes. Nigeria has been reported as the largest oil producing nation in Africa and the sixth in the world with average 2.7 million barrels per day. The effects of these activities have been of a great concern to the government, environmentalist and stakeholders in the oil and gas industries and the Niger Delta region where these hydrocarbons are produced. Nigeria is also seen as one of the world's largest sites of biological diversity with enormous natural resources. Conservation of this natural bio-diversity is been threatened by environmental degradation. These challenges are demanding a review of the national legislative and judicial processes.

Though, there exist various Nigerian environmental and petroleum laws and domesticated international instruments, the borderline had remained on how these laws are been enforced in Nigeria. To tackle these rising challenges, a comparative course on the Nigerian environmental and petroleum laws and her judicial processes to that of Canada became imperative. An academic harvest on comparative study on how a developed nation implements her laws or how her courts adjudicate its environmental laws could assist Nigeria and other developing world from the centurial environmental challenges. Also of interest is the international environmental law to which the country domesticates whether it employs international model bearing in mind the momentous hurdles of sovereign immunity of *locus standi* and *forum non conviniens.*

Indeed, Nigerian's recent experiences in oil and gas sector and status of her environmental laws seem to have underscored the enormity of the impediments to fundamental environmental changes in the country. This very principle forms component of background that the society seeks to coordinate, reconcile and optimize long-standing environmental concerns and short term economic interests to avoid its associated waste and pollution on the inhabitants. With the increase in the oil activities and the affiliated consequences, it became gradually clearer that the common law remedies were not easily available to the victims of the pollution from the oil industry and there is the need to study the Canadian position on this stand in relation to the Nigerian's view pursuant to the sections 6 and 20 of her constitution. Although, there may be no binding international regulations between the multinational oil companies and the state or its citizenry but internationally recognized practices exist and could be resorted to in answering this question. Unfortunately, unlike in the developed countries, there exist none or viable Non- governmental organizations (NGOs) in the league of Green Peace or Friends of the Earth which command the requisite resources and reputation to effectively pursue public interest environmental litigations at the moment in Nigeria as widely seen in the United States, New Zealand or United Kingdom.

Also, it seems there is a remarkable rarity of public curiosity to institute environmental related suits in Nigeria. Former Chief Justice Mohamed Uwais observed that its absence could be associated with a number of factors thus; "*that some of them are because the greater proportions of the citizenry are ignorant of the environmental damages surrounding them especially if it is caused by subtle process".* It will be important if a comparative study of the Nigerian environmental legal regime will be made with the Canadian environmental laws and judicial processes to uncover the lacunas and possibly fix them. Such Canadian laws, programs and policies made towards protecting and sustaining its national environment particularly in Alberta region became necessary to be studied in relationship with the Nigerian's legal method as it relates to the Niger Delta region.

The question then may go on the root of the effectiveness or otherwise of the Nigerian environmental law processes and implementations thereof. The answer, the work seeks in the Canadian environmental legislations and judicial processes and in extension their environmental policies and implementations. Alberta region tackles its environment through education, prevention and enforcement to ensure all Albertans keep enjoying a clean, serene and healthy environment. Where individuals or companies fail in compliance with her legislation, Alberta

Environment Agency device ranges of options to embark upon any default. This depends on the offence to ensuring that companies and individuals comply with the environmental regulations.

It is noteworthy to state that the interplay between the Nigerian social-economic, socio-cultural and socio-political stands remained at the heart of her environmental sustainable development which makes a comparative study of the Nigerian position with Canada veritable especially in the Alberta region.
It needs to be re-emphasised that the recent appalling environmental trends in Nigeria had left the nation with option of moving towards sustaining her environment particularly in the oil and gas sector with encompassing legislative and judicial processes. There is however a catalogue of arguments by varied scholars, experts and environmental policy-makers about the environmental sustainable development dilemmas and on why such have not impacted prominently by the Nigerian laws but a lot issues were left untouched which makes this work important because it proposes an academic surgery on how Alberta region of Canada to a great extent triumphed its environmental challenges similar to Nigerian cases. There exist some imperative factors for a virile environmental stability, sagacious legislative and judicial processes embedded on rule of law and which;

1. seeks to understand and integrate community perceptions in the CSR policies and practice and or looking into maintaining enabling environment and detriments of negative injunction duties;
2. implores on how government can prioritise environmental sustainability and importance of the multinational oil and gas companies' strict adherence to the international environmental standard in limiting pollution, flaring, spillages etc and how Nigerian laws deal with these issues including resources management, natural environmental standard, regulatory enforcement regime and national oil spillage detection etc and;
3. peruses into the Nigerian petroleum and environmental laws in comparisons with the international environmental laws and other developed nations like the Unite States, Great Britain and New Zealand with particular attention to Canada.

However, the prevalent approach towards environmental regulation in Nigeria appears to remain that of command and control, a regime and standard for the protection of environment which seems to have been obsolete. A more realistic approaches and model principle will be considered by the researcher towards upholding the national and international environmental sustainability pursuits to Section 20 of the Nigerian Constitution which states; *"the State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria"* and Section 17(2) (d) of the Constitution that complemented the above provision by affirming that; *"Exploitation of human or natural resources in any form whatsoever for reasons other than the good of the community shall be prevented"*.

3. Petroleum Production and Challenges of Environmental Degradation in Nigeria

The activities of oil and gas production in Nigerian Niger Delta and its further incidences which include oil spillage, gas flaring, pipe linkages, vandalization etc threaten the coastal vegetation, environmental serenity, oil and gas exploration, drinkable water, farmland, livelihood etc. Although, there have been several literatures and approaches on this matter both in Canada as much as in Nigeria to reducing these menaces. However, this work is to give a comparative study of the Canadian and Nigerian environmental laws and judicial processes and how this the result could give a more broaden approach towards tackling environmental degradation in Nigeria and reviewing practicable ways for both nations and world at large to ensuring environmental serenity in course of petroleum production. Most of these literatures have focused on the detection of oil spills along the Nigerian Coast but the appropriate execution of the findings seemed contentious and has been left the process bare if compared with the Canadian approaches.

Available information has shown that Nigeria has in the past experienced series of oil spill incidents in different parts and at different times and the question has been the viability of the present environmental laws which could quiver a pragmatic and independence of her Judiciary for a proper adjudication. Just recently, the Nigerian Minister of Environment asked the Multinational Petroleum Corporations in Nigeria to comply with proposed plan to clean up oil sites in Niger Delta. But, are there pragmatic policies to gear up this statement?
More importantly, over ten decades of petroleum production in Nigeria, there is just eleven years of the Nigerian

undisturbed democratic experience. This gives concerns for a deep rooted research which may invigorate her legal system in general and environmental and petroleum sectors in particular.

Stuart Bell and Donald McGillivray, noted how important environment is and stated that efforts should be made to protect and safeguard it for the benefit and interest of its inhabitants. This goes beyond just law making but centers more in adjudication and execution of the laws made. Thus, a call that propelled Bell and Donald to submit that *environmental considerations have become central to policy making and decision making across the wide range of issues and it is increasingly perceived that it is integral to all aspects of life*. This is an interesting opinion considering the 21st century environmental threats on the global atmosphere and economy.

However, some of the issues examined above were of particular jurisdictions and few that looked at Nigeria's situation could not offer specific hypothetical epitome that could proffer some workable solutions for the Nigerian environmental dilemma. It will interest the researcher to examine the provisions of Sections 6 and 20 of Nigerian constitution in great detail.

No doubt, the Nigerian environmental laws were inheritance of the military junta. Although these laws exist, yet they seemed to have failed sufficiently in protecting the environment and the victims from the injurious consequences of oil and gas pollution in the Niger Delta region as envisaged which makes the Canadian Nigerian comparison crucial. This and what has been the environmental set standard in Canada and other developed nations is the benchmark of this work.

Though, there is no hard and fast distinction between what the law is and how it is used however, the Nigerian Constitution has given the Nigerian judiciary an unlimited role to interpret and adjudicate the law as law is practiced upon the value and culture, policy as much as law and practice as much as principle leading to compare this proviso with what is obtainable in Alberta Canada. As one part of the tripod in the governance of Nigeria, the judiciary being the last hope of the common man has to take giant step in the restoration of confidence in the courts and consolidation of the national environmental standard in conformity with the international environmental practice.

This is the one of the ways it can take a great leap and ensure as the third arm of government to be assessed and be put in proper perspective. After all, a legal Icon, Lord Denning had stated it when he said; *"In theory the judges do not make law, they merely expound it. But as no one knows what the law is until the judges expound it, it follows that they make it"*. Also, the goal of the judiciary should be aimed at not only interpreting the law, but to ensuring that it achieves social justice which must be realized *not by lawlessness process, but by legally tuned affirmative action, activist justicing and benign interpretation within the parameters of Corpus Juris",* and its decisions should be respected to the later. The opposite seen in Nigeria forms the benchmark of this work.

Any functioning government, its agency or corporations howsoever placed, is duty bound not only to observe but also to enforce any judgment of a court of competent jurisdiction. As the primary role of the judiciary under the Constitution, the power to interpret and expound the law vested on it includes the letter and spirit of the law. The importance of this role is that, *"it is not the words of law but the internal sense of it that makes the law. Letter of law is nobody, sense and reason of law is the soul".*

The above gives the opportunity to explore more probable ways the Nigerian judiciary may take to set standard on which its role could operate in one hand and enforce these roles on its subjects at the other hand as seen in the developed world especially as Nigeria approaches the era of offshore platform decommissioning. More importantly, the ongoing United States Mexico Gulf oil spill impasse is a case to note and should be of great concern to oil producing states and oil multinational corporations across the globe. Unfortunately, most of these literatures cited above are alien to the Nigerian legal theory and some of them only examined particular jurisdictions and those that looked at international circle did not consider in great extent the Nigerian situation thus failed to offer specific judicial and academic prototypes that could proffer some practicable results for the Nigerian environmental predicaments. Also, the majority of the literatures in this field have not distinctively considered the judicial roles and goal setting approach as being such veritable principles of sustainable

development and strengthening the court focus to achieving bio-diversity preservation of the nation's natural resources for the benefits of the present and the future. Therefore, a scholarly comparative review on these issues gives a more pragmatic result to arresting environmental menaces. This perceptible fissure, is the reason this work seeks to fill up as an original input to the available literatures.

4. Legislative Framework and Contractual Obligations of Government and the Industry on Oil Pollution Control: The Precepts and Prospects

This work seeks to examine and make a comparative study of Canadian and Nigerian environmental laws and judicial processes with respect to oil and gas production and its environmental impasse; To evaluate how the rule of law will become effective and x-ray the bottlenecks facing the Nigerian environments as a result of petroleum extraction and how Alberta region tackles its environmental challenges; To review factors that affect the effectiveness of the Nigerian environmental laws, policies and judicial pronouncements and make a case study of Canadian position on this case in ensuring that the devastating environmental cases are put to a stop.

In order to achieve its set objectives, this work raises thought-provoking questions and shall make in-depth efforts of giving prudent answers to them: What is the nature of Nigerian environmental and petroleum laws? What is the effect of international environmental practice on Nigerian environmental law and policies? What are the implications of the non adaption and adherence of International Environmental Standard and to what extent could its non adoption affect the Nigerian judicial decisions in maintaining good environmental stability? How can Nigerian government and its environmental agencies prioritize environmental sustainability in its policies? What effect does the Nigerian judicial order have on International Law with respect to transnational oil and gas industries? What features of the Canadian environmental legislative theories need to be suggested for adoption by the Nigerian legal system? How will sound legislative and judicial processes impact on resource sustainability, environmental and developmental regime in Nigeria and Canada?

5. Summary

This work is aimed towards deepening knowledge and understanding of the Canadian and Nigerian environmental laws and the best way of maintaining global environmental stability from derailing. A principle which seeks to espouse social justice by settling the multifaceted issues contiguous with legislative and judicial roles amid to sustaining enabling environment in Canada and Nigeria.

It is on this platform that the work highlighted some ways by which the Nigerian legislature and judiciary can be strengthened in the area of law making and enforcement of environmental laws. One of the challenges of weak or non effective legislative and judicial set up is that it renders the society unproductive and lawless. Thus, to ensure social justice and sustainable environment, the thesis will present a shape of legislative and judicial roles on encompassing environmental laws through a comparative study of Canadian and Nigerian environmental laws stand. It intends to make a change in their thinking, choices of law and impartial rulings as it affects the environment. This is how the operations of oil and gas industries and good governance can be felt by the environment and the citizenry in an impeccable atmosphere.

The work presented a spotlight which enlightened the stakeholders in oil and gas industries and the government on the way environmental threats as result of petroleum production could be curtailed. This work will assist oil and gas industries, lecturers, judges, scholars, students of environmental and oil and gas law, Non-governmental Organization (NGOs), and indeed those interested in environmental matters.

5.1. Conclusion

The pertinent aim of this work is to embark on an harvest of deep, penetrating and thought provoking research in tackling identified issues. In taking this voyage with prudent and scholastic apparatus set above, the noted sticky situation of judicial processes and bewilderment surrounding them thereof were discussed.

5.2 Recommendations

It is recommended that government should take a more pro-active step in seeing that environmental Impact Assessment report is produced and implemented on the issue of oil and Gas extraction in Nigeria to minimize the effect of same on the Nigeria environment and its people. It is also recommended that there should be more seminars, symposia's and public lectures on the issue of oil and gas extraction in Nigeria in order to minimize its effect on the environment and the Nigerian people. There should also be a comparative course to be introduced to the study of Nigerian environmental and petroleum laws and the judicial processes, which will compare same as to the Canadian situation on the same issue. There should be viable non-governmental organizations (NGOs) in the League of Green Peace or Friends of the Earth which commands the requisite resources and reputation to effectively pursue public interest environmental litigations. This is not common as we can find in Canada, U.S, New Zealand, United Kingdom and other countries. It is further recommended that there should be strict adherence to International environmental standards in limiting pollution, flaring, spillages.

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